



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0318; FRL-10004-01-R9]

#### **Air Plan Approval; California; San Diego Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is proposing full approval of revisions to the San Diego County Air Pollution Control District (SDCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOC) from architectural coating operations. We are proposing a full approval of the amended SDCAPCD and SJVUAPCD architectural coatings rules because they meet all the applicable requirements. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0318 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3024 or by email at [Lazarus.arnold@epa.gov](mailto:Lazarus.arnold@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. The State’s Submittals**

- A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted/Amended/Revised	Submitted
SDCAPCD	67.0.1	Architectural Coatings	2/10/2021 (effective for state law purposes on 1/1/2022)	4/20/2021, as an attachment to a letter dated 4/16/2021
SJVUAPCD	4601	Architectural Coatings	4/16/2020 (effective upon adoption but the new or revised VOC content limits were effective 1/1/2022)	4/23/2020, as an attachment to a letter of the same date

The submittal for SDCAPCD Rule 67.0.1 became complete by operation of law on October 20, 2021. On June 29, 2020, the EPA determined that the submittal for SJVUAPCD Rule 4601 met the completeness criteria in 40 CFR part 51, appendix V.<sup>1</sup>

*B. Are there other versions of these rules?*

We approved an earlier version of SDCAPCD Rule 67.0.1 into the SIP on October 4, 2016 (81 FR 68320). The SDCAPCD adopted revisions to Rule 67.0.1 on February 10, 2021, and the revisions became effective as a matter of state law on January 1, 2022. CARB submitted the amended rule to the EPA on April 20, 2021, as an attachment to a letter dated April 16, 2021. If we take final action to approve the February 10, 2021 version of Rule 67.0.1, it will replace the previously-approved version of the rule in the SDCAPCD portion of the applicable California SIP.

We approved an earlier version of SJVUAPCD Rule 4601 into the SIP on November 8, 2011 (76 FR 69135). The SJVUAPCD adopted revisions to Rule 4601 on April 16, 2020 (effective upon adoption), and CARB submitted the amended rule to us on April 23, 2020, as an attachment to a letter of the same date. If we take final action to approve the April 16, 2020 version of Rule 4601, it will replace the previously-approved version of the rule in the

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<sup>1</sup> Letter from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, dated June 29, 2020.

SJVUAPCD portion of the applicable California SIP.

C. *What is the purpose of the submitted rule revisions?*

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Architectural coatings are coatings that are applied to stationary structures and their accessories. They include house paints, stains, industrial maintenance coatings, traffic coatings, and many other products. VOCs are emitted from the coatings during application and curing, and from the associated solvents used for thinning and clean-up.

SDCAPCD Rule 67.0.1 and SJVUAPCD Rule 4601 regulate VOC emissions from architectural coatings. The rules were updated to conform to CARB's Suggested Control Measures (SCM) for Architectural Coatings, May 2019. More specifically, to conform with CARB's 2019 update of the SCM for architectural coatings, SDCAPCD and SJVUAPCD added certain new categories of coatings, tightened VOC limits for certain other categories of coatings, added new limits for colorants, updated test methods, and clarified and tightened certain definitions and administrative requirements. SDCAPCD estimates that aligning Rule 67.0.1 with the CARB 2019 SCM for architectural coatings will reduce VOC emissions by approximately 0.22 tons per day (tpd) in San Diego County.<sup>2</sup> SJVUAPCD estimates that aligning Rule 4601 with the CARB 2019 SCM will reduce VOC emissions in San Joaquin Valley by approximately 0.30 tpd.<sup>3</sup>

Both rules were also amended to include provisions to address contingency measure requirements for nonattainment areas with respect to ozone national ambient air quality standards (NAAQS). With respect to contingency provisions, the air districts amended their respective

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<sup>2</sup> SDCAPCD, Agenda Item, February 10, 2021, Subject: Noticed Public Hearing – Adoption of Amendments to Rule 67.0.1 – Architectural Coatings (Districts: All), Attachment C, Incremental Cost-Effectiveness Analysis, Proposed Amended Rule 67.0.1 – Architectural Coatings, page C-1.

<sup>3</sup> SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4601 (Architectural Coatings) April 16, 2020, pages 13-14.

architectural coatings rules to include new sections that would remove the rules' small container exemptions (SCE) (i.e., one liter or less) for certain types of coatings within 60 days of the EPA's determination that the area failed to meet a reasonable further progress (RFP) milestone or to attain the ozone national ambient air quality standards (NAAQS) by the applicable attainment date. As originally submitted, the contingency provision in the SJVUAPCD architectural coatings rule (section 4.3 of Rule 4601) included language that was inconsistent with the requirements for contingency measures in CAA sections 172(c)(9) and 182(c)(9) and inconsistent with the intent of the SJVUAPCD's Board in adopting the provision. However, the SJVUAPCD has subsequently made an administrative correction to the rule text to clarify the contingency measure provision consistent with the SJVUAPCD's Board's intent and has submitted the revised rule to the EPA to replace the earlier submitted version.<sup>4</sup> For this proposed action, we are basing our evaluation on the SJVUAPCD architectural coatings rule as corrected.

SDCAPCD estimates that removing the SCE for certain coatings will reduce VOC emissions by approximately 0.72 tons per day (tpd) in San Diego County.<sup>5</sup> SJVUAPCD estimates that removing the SCE for certain coatings will reduce VOC emissions in San Joaquin Valley by approximately 0.65 tpd.<sup>6</sup> The EPA's technical support documents (TSDs) have more information about these rules.

## **II. The EPA's Evaluation and Action**

### **A. *How is the EPA evaluating the rules?***

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control

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<sup>4</sup> Letter from Sheraz Gill, Deputy Air Pollution Control Officer, SJVUAPCD, to Doris Lo, Manager, EPA Region IX, dated August 5, 2022. CARB submitted the corrected version of the rule to EPA electronically on August 11, 2022, to replace to earlier version of the rule.

<sup>5</sup> SDCAPCD, 2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County (October 2020), Attachment O (Contingency Measures for San Diego County), page O-1.

<sup>6</sup> SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4601 (Architectural Coatings) April 16, 2020, pages 12-13.

requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). We are also evaluating whether the rules meet the requirements for contingency measures specified in CAA sections 172(c)(9) and 182(c)(9).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). San Diego County and San Joaquin Valley have been designated as Severe or Extreme nonattainment areas for the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (see 40 CFR 81.305).<sup>7</sup> Because there is no relevant EPA CTG document for architectural coatings and because there are no major architectural coating sources within San Diego County or San Joaquin Valley, architectural coatings are not subject to RACT requirements. However, as nonattainment areas for ozone, San Diego County and San Joaquin Valley are subject to the requirement to implement all reasonably available control measures (RACM) as needed to attain the 2008 and 2015 ozone NAAQS by the applicable attainment dates. Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

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<sup>7</sup> San Joaquin Valley is also designated as Moderate nonattainment for the 2012 PM<sub>2.5</sub> NAAQS and Serious nonattainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is thus subject to the requirement to implement reasonably available control measures (RACM) and best available control measures (BACM). However, VOC emissions do not contribute significantly to ambient PM<sub>2.5</sub> levels that exceed the PM<sub>2.5</sub> NAAQS. See 85 FR 17382, at 17394 (March 27, 2020) (proposed approval of state's precursor demonstration for the 2006 PM<sub>2.5</sub> NAAQS in San Joaquin Valley), finalized at 85 FR 44192 (July 22, 2020); and 86 FR 49100, at 49109 (September 1, 2021) (proposed approval of state's precursor demonstration for the 2012 PM<sub>2.5</sub> NAAQS in San Joaquin Valley ). Thus, submitted SJVUAPCD Rule 4601 does not need to meet the requirements for RACM or BACM with respect to the PM<sub>2.5</sub> NAAQS

3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59, Subpart D.
5. California Air Resources Board (CARB) Suggested Control Measure for Architectural Coatings, May 2019.

B. *Do the rules meet the evaluation criteria?*

We have evaluated the enforceability of submitted SDCAPCD Rule 67.0.1 and SJVUAPCD Rule 4601 with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting, and have concluded that both rules continue to be enforceable for the purposes of CAA section 110(a)(2)(A).

We have also determined that the submitted rules implement RACM-level controls for this particular area source because the VOC content limits are more stringent than the corresponding federal requirements in Table 1 to Subpart D of 40 CFR part 59, “Content Limits for Architectural Coatings,” and are consistent with CARB’s 2019 SCM.

Third, we have found that, because the submitted rules tighten VOC content limits for certain coating categories and restrict certain existing exemptions, they would not interfere with any applicable requirement concerning attainment or reasonable further progress (RFP) or any other requirement of the CAA, and as such, may be approved under CAA sections 110(l) and 193.

Lastly, we have reviewed the specific new provisions in submitted SDCAPCD Rule 67.0.1 (paragraph (b)(6)) and submitted SJVUAPCD Rule 4601 (section 4.3) that are intended to address contingency measure requirements for ozone nonattainment areas. As noted previously, the contingency measure in both rules is the removal of the SCE for certain coating categories within 60 days if the EPA makes certain final determinations.

Under the CAA, ozone nonattainment areas classified under subpart 2 as “Serious” or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). CAA section 172(c)(9) requires states with nonattainment areas to provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the NAAQS by the applicable attainment date. Such measures must be included in the SIP as contingency measures to take effect in any such case without further action by the state or the EPA. Section 182(c)(9) requires states to provide contingency measures in the event that an ozone nonattainment area fails to meet any applicable RFP milestone.

Contingency measures are additional controls or measures to be implemented in the event the area fails to make RFP or to attain the NAAQS by the attainment date. Contingency measures must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.<sup>8</sup> The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.<sup>9</sup>

Neither the CAA nor the EPA’s implementing regulations establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but the 2008 Ozone SIP Requirements Rule (SRR) reiterates the EPA’s guidance recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year’s worth of RFP, thus amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.<sup>10</sup> In a decision published in August 2021 in the *AIR v. EPA* case, the U.S. Court of Appeals for the Ninth Circuit remanded the EPA’s approval of ozone contingency measures for the San Joaquin Valley and held that, under EPA’s current guidance, the surplus emissions reductions from already-implemented measures cannot be relied upon to

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<sup>8</sup> See *Bahr v. EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

<sup>9</sup> See 70 FR 71612 (November 29, 2005); see also 2008 Ozone SRR, 80 FR 12264 at 12285 (March 6, 2015)

<sup>10</sup> 80 FR 12264 at 12285 (March 6, 2015).



justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient by itself to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.<sup>11</sup>

Based on our review of the submitted rules in light of the requirements for contingency measures summarized above, we find that the contingency measure in paragraph (b)(6) of submitted SCDAPCD Rule 67.0.1 meets the applicable requirements for such measures in CAA sections 172(c)(9) and 182(c)(9) because the removal of the SCE for certain coating categories is not required as RACT or RACM or for any other CAA purpose; paragraph (b)(6) includes an appropriate triggering mechanism (*i.e.*, EPA final determinations of failures to meet an RFP milestone or to attain the NAAQS by the applicable attainment dates); paragraph (b)(6) specifies a schedule for implementation (*i.e.*, the SCE for the subject coatings expires 60 days after EPA final determination); and paragraph (b)(6) is designed to take effect (once triggered) without further significant action by the District, CARB or the EPA.

We have conducted a similar review of section 4.3 of submitted SJVUAPCD Rule 4601 and find that it meets the applicable requirements for contingency measures in CAA section 172(c)(9) and 182(c)(9). That is, we find that removal of the SCE as provided in section 4.3 of submitted SJVUAPCD Rule 4601 is not otherwise required under the CAA and thus is eligible as a contingency measure and that section 4.3 specifies an appropriate schedule for implementation (*i.e.*, 60 days from EPA final rulemaking) and is designed to take effect (once triggered) without further significant action by the District, CARB or the EPA.

Lastly, we have reviewed the Districts' estimate of the emissions reductions that can be expected if the contingency measure provisions (paragraph (b)(6) of submitted SDCAPCD Rule 67.0.1 and section 4.3 of submitted SJVUAPCD Rule 4601) are triggered and find the estimates to be reasonable and adequately documented. The emissions reductions associated with the contingency measure provisions can be taken into account by the EPA when determining

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<sup>11</sup> *Association of Irrigated Residents v. EPA*, 10 F.4th 937 (9th Cir. 2021) ("AIR v. EPA" or "AIR").

whether the State and Districts have fully met the requirements for San Diego County and the San Joaquin Valley with respect to the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9). The EPA expects to make the determinations with respect to the area-wide contingency measure SIP requirements in separate rulemakings.

The TSDs have more information on our evaluation of the two submitted architectural coatings rules.

C. *What are the rule deficiencies?*

We have not identified any deficiencies that would prevent approval of the two amended architectural coatings rules.

D. *The EPA's recommendations to further improve the rules*

The TSDs include the EPA's recommendations for the next time the local agencies modify the rules.

E. *Proposed action and public comment*

Pursuant to section 110(k)(3) of the Act, and for the reasons given above, the EPA is proposing a full approval of submitted SDCAPCD Rule 67.0.1 and SJVUAPCD Rule 4601. For both submitted rules, our proposed action is based on our finding that the non-contingency-related amendments meet all applicable CAA requirements. With respect to the contingency measure provisions in the submitted rules, our proposed action is based on our finding that the provisions have the necessary attributes of contingency measures under the CAA. Thus, we are approving the provisions as contingency measures for the two areas for the 2008 ozone NAAQS.

We are not making any determination at this time as to whether these individual contingency measures are sufficient in themselves for their respective nonattainment areas to fully comply with the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9). We will be taking action on the contingency measure SIP elements for these areas in separate rulemakings and will be taking into account the emissions reductions associated with the contingency provisions in the submitted rules at that time. Regardless of whether the

contingency measure SIP elements are subsequently approved or disapproved, we find that the contingency provisions in the submitted rules strengthen the SIP for their respective nonattainment areas. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the Federal Register**].

If finalized as proposed, this action would incorporate the submitted architectural coatings rules into the SIP and the submitted rules would replace the corresponding existing SIP versions of the rules in the California SIP.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SDCAPCD Rule 67.0.1 and SJVUAPCD Rule 4601, which regulate VOC emissions from architectural coatings. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 12, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

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